

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 N. 5TH STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

LSPS, INC., successor to Dymon, Inc.,

805 E. Old 56 Highway
Olathe, Kansas 66061

RCRA I.D. No. KSD06752994
and KSR000005033

Respondent.

Proceeding under Section 3008(a) and (g) of
of the Resource Conservation and Recovery
Act as amended, 42 U.S.C. § 6928(a) and (g)

COMPLAINT AND
CONSENT AGREEMENT/
FINAL ORDER

Docket No. RCRA-07-2002-0165

COMPLAINT AND
CONSENT AGREEMENT/FINAL ORDER

This administrative action is being conducted pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Title 40 C.F.R. Part 22 ("Consolidated Rules of Practice").

The Complainant is the Director of the Air, RCRA, and Toxics Division of the United States Environmental Protection Agency ("EPA") Region 7, who has been duly delegated the

authority to bring this action. The Respondent is LSPS, Inc., a company incorporated under the laws of Delaware and authorized to conduct business in the State of Kansas. References to "Respondent" shall include LSPS, Inc. and its predecessor, Dymon, Inc., a former Missouri corporation which merged with LSPS, Inc. in December 1998. The authority to execute the Complaint portion of this Complaint and Consent Agreement/Final Order is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated March 20, 1985. The Regional Administrator has delegated this authority to the Director of the Air, RCRA and Toxics Division of EPA, Region 7, by EPA Delegation No. R7-8-9-A, dated January 1, 1995.

Complainant and Respondent have agreed to a settlement of the following Factual Allegations, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3). This Complaint and Consent Agreement/Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Complaint and Consent Agreement/Final Order.

The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter "K.A.R. 28-31"). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for

any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997. Based upon the facts alleged in this Complaint and Consent Agreement/Final Order and upon those factors which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA on October 26, 1990, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this Complaint and Consent Agreement/Final Order.

FACTUAL ALLEGATIONS

Jurisdiction, Statutory and Regulatory Requirements

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

2. This Complaint and Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondent violated the statutory and regulatory requirements found at:

- a. Section 3005 of RCRA, 42 U.S.C. § 6925 and K. S. A. 65-3437;
- b. K.A.R. 28-31-4(b);
- c. K.A.R. 28-31-4(d);
- d. K.A.R. 28-31-4(k); and
- e. K.A.R. 28-31-14.

3. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that if EPA determines that any person has violated or is in violation of any requirement of Subchapter III, EPA may issue an order assessing a civil penalty for any past or current violation, require compliance, or both.

4. Section 3005 of RCRA, 42 U.S.C. § 6925, requires each person owning or operating a facility for the treatment, storage or disposal of hazardous waste identified or listed under Subchapter C of RCRA to have a permit issued pursuant to Section 3005 of RCRA.

5. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now

authorized for violations of Subchapter III of RCRA that occur after January 30, 1997. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA must consider various factors in assessing a penalty, including the seriousness of the violations and any good faith efforts of Respondent to comply with the applicable requirements.

6. Respondent is a Delaware corporation authorized to conduct business in the State of Kansas and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

7. Respondent, located at 805 E. Old 56 Highway, Olathe, Kansas, 66061, is a manufacturer of commercial products, including cleaning products, pesticides, hand cleaners, air fresheners, degreasers and graffiti removers. Currently, Respondent employs approximately 150 people at the Olathe, Kansas facility.

8. Prior to its occupation of the location at 805 E. Old 56 Highway, Respondent operated a facility at 3401 Kansas Avenue, Kansas City, Kansas (the "Kansas City, Kansas Facility"). Operations began at the Kansas City, Kansas Facility in 1970 and continued until Respondent moved from the Kansas City, Kansas Facility to its current location in Olathe, Kansas (the "Olathe Facility") in January 1997.

9. At the times pertinent to the Complaint, Respondent was generating hazardous waste as a result of its manufacturing operations. Respondent used solvents, including tetrachloroethylene, trichloroethylene, trichloroethane, toluene, mineral spirits, methylene chloride, acetone, and methyl ethyl ketone, both in the formulation of its products and in cleaning operations throughout the Kansas City, Kansas Facility, such as cleaning of batching equipment and floor washdowns. In addition, Respondent generated hazardous waste in the form

of some off-specification and/or some returned or unusable products. The wastes generated by Respondent at the Kansas City, Kansas Facility included waste classified as D001, D007, F002, F003, F005, D018, D015 and D039, which include wastes exhibiting the hazardous characteristics of toxicity and ignitability. Methods of classifying these wastes are set forth at 40 C.F.R. Part 261, Subparts C and D, which are incorporated by reference at K.A.R. 28-31-3.

10. Beginning in 1997, Respondent generated several of these same waste streams at the Olathe Facility. In 1998, Respondent eliminated the use of chlorinated solvents in its manufacturing processes.

11. The wastes listed in paragraph 9 are "hazardous wastes" within the meaning of 40 C.F.R. Part 261, which is incorporated by reference at K.A.R. 28-31-3.

12. On or about August 13, 1980, Respondent submitted a Notification of Regulated Waste Activity to EPA for its Kansas City, Kansas Facility. The Notification indicated that Respondent was operating as a generator of hazardous waste. Respondent was issued the EPA identification number KSD067952994. After operations were moved, the Olathe Facility was issued the EPA identification number KSR000005033.

13. Respondent has never obtained a permit to operate a hazardous waste treatment, storage or disposal facility at either the Kansas City, Kansas location or the Olathe, Kansas location.

14. Pursuant to Section 3005 of RCRA and K. S. A. § 65-3437, it is a violation of RCRA to operate a hazardous waste treatment, storage or disposal facility without a permit.

15. At all times pertinent to the Complaint, Respondent was generating greater than 1,000 kg of hazardous waste per month. Pursuant to K.A.R. 28-31-2(c), Respondent was therefore classified as an "EPA generator" under the Kansas hazardous waste regulations.

16. On January 16-24, 1997, the EPA conducted a RCRA compliance inspection of the Kansas City, Kansas Facility. On January 30, 1997, the EPA conducted a RCRA compliance inspection of the Olathe Facility. When these inspections occurred, Respondent was in the process of moving its operations from the Kansas City, Kansas Facility to the Olathe Facility, which was not yet fully operational at the time of the January 30, 1997 inspection. On November 9, 1998, the Kansas Department of Health and Environment ("KDHE") and the EPA conducted another RCRA compliance inspection at the Olathe Facility. The EPA and KDHE issued inspection reports that identified a number of alleged RCRA violations. Information gathered in the course of these inspections and in subsequent correspondence with Respondent forms the basis for the allegations of violation below.

17. On January 13, 2002, Complainant and Respondent executed a Tolling Agreement, which was extended by agreement of the parties until June 28, 2002. A copy of the Tolling Agreement and all extensions are attached to this Complaint and Consent Agreement and Final Order.

VIOLATIONS

**OPERATION OF A HAZARDOUS WASTE TREATMENT, STORAGE OR DISPOSAL
FACILITY WITHOUT A RCRA PERMIT/FAILURE TO DOCUMENT INSPECTIONS
OF HAZARDOUS WASTE STORAGE AREAS**

Section 3005 of RCRA, 42 U.S.C. § 6925 and K. S. A. 65-3437/K.A.R. 28-31-4(k)

18. Complainant hereby incorporates the allegations contained in paragraphs 1 through 17 above, as if fully set forth herein.

Illegal Storage of Hazardous Waste

19. The regulations at K.A.R. 28-31-4(g) state that an EPA generator may accumulate hazardous waste in tanks and containers on-site for ninety (90) days without a permit or without having interim status, provided certain conditions listed in K.A.R. 28-31-4-(g)(1) through(4) are met.

20. At the time of the January 1997 inspection of the Kansas City, Kansas Facility, Respondent had stored approximately 76 drums of hazardous waste in excess of 90 days. In addition, Respondent had stored hazardous waste in two tanks (designated tanks S-1 and S-2) for greater than 90 days. Wastes stored over 90 days include various wastes listed in paragraph 9 above.

21. At the time of the November 1998 inspection of the Olathe Facility, records at the facility showed that on at least five occasions Respondent had at least one container of hazardous waste in storage for over 90 days.

22. By storing hazardous waste on-site for greater than ninety (90) days, Respondent was operating a hazardous waste storage facility without a permit and subjected itself to the requirements of 40 C.F.R. Parts 264, 265 and 270, pursuant to K.A.R. 28-31-4(i)

23. Pursuant to Section 3005 of RCRA and K.S.A. 65-3437, it is a violation of RCRA to operate a hazardous waste treatment, storage or disposal facility without a permit.

24. Respondent has not obtained a permit to operate any portion of either the Kansas City, Kansas Facility or the Olathe Facility as a treatment, storage or disposal facility.

25. Respondent's operation of a hazardous waste storage facility without a permit is a violation of Section 3005 of RCRA and K.S.A. 65-3437.

Failure to meet generator requirements

26. The regulations at K.A.R. 28-31-4(g) state that an EPA generator may accumulate hazardous waste in tanks and containers on-site for ninety (90) days without a permit or without having interim status, provided certain conditions listed in K.A.R. 28-31-4-(g)(1) through(4) are met.

27. At the time of the January 1997 inspection of the Kansas City, Kansas Facility, Respondent was failing to meet the following conditions:

Improper hazardous waste container management

28. K.A.R. 28-31-4(g) requires EPA generators to comply with the requirements of 40 C.F.R. Part 265, Subpart I. These regulations require that containers of hazardous waste be: labeled as hazardous waste; kept closed except when waste is being added or removed; kept in good condition; and stored in such a way as to prevent conditions that may rupture the container and cause it to leak. In addition, K.A.R. 28-31-4(g) requires that generators mark drums with the words "hazardous waste" and label or mark the containers with the date upon which accumulation of waste in the container began.

29. At the time of the January 1997 inspection of the Kansas City, Kansas Facility, Respondent was storing approximately 370 containers of waste in areas of the facility where hazardous wastes were stored. Of these, approximately 30 containers were open, 140 were not marked with the accumulation date, 128 were not labeled with the words "hazardous waste" and 24 had been exposed to freezing conditions, causing some of the containers to freeze and bulge.

30. At the time of the November 1998 inspection of the Olathe Facility, approximately 22 boxes of off-specification aerosol cans stored on a pallet were not marked with the accumulation start date or with the words "hazardous waste." Some boxes on the same pallet were correctly marked and labeled.

Improper hazardous waste tank management

31. K.A.R. 28-31-4(g) requires EPA generators to comply with the requirements of 40 C.F.R. Part 265, Subpart J if hazardous waste is being managed in tanks. In addition, tanks containing hazardous waste must be marked with the date upon which accumulation of waste in the tank began and must be marked clearly with the words "hazardous waste." In addition, tanks must be inspected to ensure that they are kept in good condition and the secondary containment areas and liners must be designed to ensure that the secondary containment structure does not cause releases of hazardous waste and must be free of cracks or gaps.

32. At the time of the January 1997 inspection at the Kansas City, Kansas Facility, two tanks, designated as tanks S-1 and S-2, contained hazardous waste. Neither tank was labeled as hazardous waste and neither was marked with the accumulation date. In addition, the secondary containment structure had developed cracks in the top layers and portions of the epoxy secondary containment liner were missing.

Storing incompatible wastes without physical separation

33. K.A.R. 28-31-4(g)(1) requires EPA generators to comply with 40 C.F.R. Part 265, Subpart I. 40 C.F.R. § 265.177(c) provides that containers holding hazardous waste which is incompatible with any waste stored in containers nearby must be separated by means of a dike, berm, wall or other device. Definitions and examples of incompatible wastes are found in Appendix V to 40 C.F.R. Part 265.

34. At the time of the November 1998 inspection at the Olathe Facility, the inspector observed caustic and flammable hazardous wastes, which fit the definition of incompatible wastes at 40 C.F.R. Part 265, Appendix V, within the same secondary containment area without physical separation.

Inadequate spill control equipment

35. K.A.R. 28-31-4(g)(4) requires EPA generators to comply with 40 C.F.R. § 265.32, which states that facilities must have spill control equipment available in areas where hazardous waste management is occurring, and have access to communication equipment in hazardous waste storage areas.

36. At the time of the January 1997 inspection at the Kansas City, Kansas Facility, Respondent did not have spill control equipment readily available in the west dock, the analytical lab and other areas throughout the plant where hazardous waste was being stored. In addition, Respondent did not have a telephone or other communication device in the hazardous waste storage shed.

37. At the time of the January 1997 inspection of the Olathe Facility, Respondent did not have any of the spill control equipment at the facility that was listed in the facility's contingency plan.

Inadequate maintenance and operational practices

38. K.A.R. 28-31-4(g) requires EPA generators to comply with 40 C.F.R. § 265.31, which states that facilities must operate in such a manner as to minimize the possibility of release of hazardous waste to the environment.

39. At the time of the January 1997 inspection of the Kansas City, Kansas Facility, Respondent was storing drums containing hazardous waste in the unpaved parking lot. In addition, approximately 24 drums of hazardous waste had been exposed to freezing conditions, which caused some of the containers to rupture and leak.

Failure to make arrangements with local authorities

40. K.A.R. 28-31-4(g) requires EPA generators to comply with 40 C.F.R. § 265.37, which states that facilities must provide local fire departments and hospitals and police with appropriate information regarding the wastes handled at their facilities.

41. At the time of the January 1997 inspection of the Olathe Facility, Respondent's employee told the inspectors that Respondent had not made any arrangements with the local police or hospital and although they had visited the local fire department, Respondent had not discussed waste management with them.

42. Respondent's failure to comply with the above requirements of K.A.R. 28-31-4(g) as described in paragraphs 25 through 40 above subjects Respondent to the requirement to have a permit or interim status for its storage of hazardous waste.

43. Respondent has never obtained a permit or interim status to operate a hazardous waste storage facility.

44. Respondent's operation of a hazardous waste treatment, storage, and/or disposal facility without a permit is a violation of Section 3005 of RCRA and K.S.A. 65-3437.

Failure to document hazardous waste inspections

45. K.A.R. 28-31-4(k) requires EPA generators to perform weekly inspections of hazardous waste storage areas and to document these inspections in accordance with 40 C.F.R. § 265.15(d).

46. At the time of the January 1997 inspection at the Olathe Facility, Respondent's employee told the inspectors that prior to January 27, 1997, Respondent did not document inspections it had conducted of hazardous waste containers. In response to an information request from EPA, Respondent subsequently produced some documentation of hazardous waste container inspections. Later, during the November 1998 inspection of the Olathe Facility, the inspector documented that Respondent had not recorded its container inspections on five occasions in 1998 and upon numerous occasions in 1997.

47. Respondent's failure to document inspections of its hazardous waste containers is a violation of K.A.R. 28-31-4(k).

FAILURE TO PERFORM A HAZARDOUS WASTE DETERMINATION

K.A.R. 28-31-4(b)

48. K.A.R. 28-31-4(b) requires all generators of solid waste to determine if the solid waste is a hazardous waste using the methods enumerated therein.

49. At the time of the January 1997 inspection of the Kansas City, Kansas Facility, the inspectors observed that Respondent was generating several waste streams for which it had not performed a hazardous waste determination or had performed inadequate waste determinations. Specifically, Respondent had failed to perform adequate hazardous waste determinations on: a bucket of mop water, the contents of a mixer drum; various drums of waste waters, five drums of returned carburetor cleaner, numerous containers of concrete patch, several aerosol cans disposed of in the trash; and used absorbent pigs disposed of in the trash.

50. The following waste streams identified in paragraph 49 were tested and found to be hazardous wastes:

a. At the time of the January 1997 inspection of the Kansas City, Kansas Facility, Respondent's representative told EPA inspectors that a mop bucket used to clean up spills contained only soap and water. A sample of the mop water was analyzed and found to exhibit the hazardous characteristic of toxicity for methyl ethyl ketone, using the procedures set forth at 40 C.F.R. Part 261, Subpart C. The waste in the mop water is therefore classified as a hazardous waste bearing the waste code D035.

b. At the time of the January 1997 inspection of the Kansas City, Kansas Facility, Respondent's representative told EPA inspectors that he did not know what was in a mixer drum when inspectors inquired as to the contents of the drum. The inspectors took samples of the contents of the drum. The material in the mixer drum was found to have a flash point of between 18 and 22 degrees Centigrade, which means that the material exhibits the hazardous characteristic of ignitability as set forth at 40 C.F.R. Part 261, Subpart C. This waste is therefore classified as a hazardous waste bearing the waste code D001.

51. At the time of the January 1997 inspection, Respondent was storing several 55-gallon drums of returned carburetor cleaner. The carburetor cleaner had been at the facility for approximately 18 months and was being stored in drums which were in poor condition in an area (the west dock) in which hazardous waste was being stored. According to the material safety data sheet provided by the facility, the returned carburetor cleaner had a flash point of 45 degrees Fahrenheit. This material therefore exhibits the hazardous characteristic of ignitability and is classified as a hazardous waste bearing the waste code D001 pursuant to 40 C.F.R. Part 261, Subpart C.

52. At the time of the January 1997 inspection of the Kansas City, Kansas Facility, Respondent was storing several drums of various waste waters in the hazardous waste storage shed and in the west dock area. Subsequent analysis of the wastes in these drums by Respondent showed that some of the drums contained hazardous wastes exhibiting the hazardous characteristic of toxicity. At the time of the inspection, Respondent's representative had asserted

that hazardous waste waters generated by Respondent were being handled as such, and at the time of the inspection, some of the containers of hazardous waste waters were properly labeled and dated and otherwise being handled as hazardous wastes. However, several drums of waste water had been improperly characterized and were being stored as non-hazardous waste.

Respondent subsequently determined that these containers also contained hazardous waste.

53. At the time of the January 1997 inspection of the Kansas City, Kansas Facility, Respondent had disposed of some partially filled aerosol cans and used absorbent pigs by placing them in the regular trash receptacles at the facility.

54. According to Respondent's representative, the unusable aerosol cans were punctured and the contents were collected in a 55-gallon drum. The contents of the 55-gallon drum were handled by the facility as hazardous waste. The empty cans were then placed in the trash to be taken to the landfill.

55. Aerosol cans usually contain propellants, solvents and other chemicals, which, when discarded, are classified as hazardous wastes. Respondent stated that it was Respondent's practice to place empty aerosol cans in the trash; however, several of the aerosol cans placed in the trash at the time of the inspection were partially filled. Respondent failed to make a hazardous waste determination on the contents of the partially-filled aerosol cans prior to disposing of them in the trash.

56. At the time of the inspection, Respondent had used the absorbent pigs to pick up spills in the hazardous waste storage shed and in areas where leaks from drums containing hazardous waste had been observed by the EPA inspectors. Respondent nevertheless placed the used absorbent pigs in the trash to be taken to the landfill. Respondent failed to determine whether the absorbent pigs used to clean up spills of hazardous waste in the storage shed and from drums containing hazardous waste were themselves a hazardous waste.

57. Respondent's failure to perform adequate hazardous waste determinations on the above waste streams is a violation of K.A.R. 28-31-4(b).

INADEQUATE MANIFESTS USED TO SHIP HAZARDOUS WASTES

58. K.A.R. 28-31-4(d) requires that hazardous waste must be shipped using a hazardous waste manifest prepared in accordance with 40 C.F.R. Part 262. K.A.R. 28-31-14 incorporates 40 C.F.R. Part 268 by reference. 40 C.F.R. § 268.7 requires that Land Disposal Restriction ("LDR") notices be included with hazardous waste manifests.

59. At the time of the January 1997 inspection of the Kansas City, Kansas Facility, the inspectors reviewed manifests and other records. Several manifests that had accompanied off-site shipments of hazardous waste failed to meet the requirements of 40 C.F.R. Part 262 and 40 C.F.R. Part 268. Specifically, #00074 failed to list D007 waste on the LDR notice; #00073 did not have a signed and dated LDR notice; #00070 did not list a hazardous waste constituent of concern for waste code U080 on the LDR notice; #00063 did not list hazardous waste constituents of concern for waste codes F002, F003 and U080 on the LDR notice; and #00071 and #00073 did not have the required manifest continuation sheet.

60. During the November 9, 1998 inspection of the Olathe Facility, inspectors observed that thirteen manifests had the RCRA facility I.D. number for the Kansas City, Kansas Facility on them rather than the RCRA I.D. number for the Olathe Facility.

61. Failure to prepare hazardous waste manifests in accordance with 40 C.F.R. §262.20 is a violation of K.A.R. 28-31-4(d). Failure to include LDR notices on a hazardous waste manifest is a violation of and K.A.R. 28-31-14, which incorporates 40 C.F.R. § 268.7 by reference.

CONSENT AGREEMENT

62. Subject to Paragraphs 63 and 64 below, Respondent and EPA agree to the terms of the Consent Agreement portion of this Complaint and Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Complaint and Consent Agreement/Final Order. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.

63. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Complaint and Consent Agreement/Final Order set forth below.

64. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Complaint and Consent Agreement/Final Order.

65. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Complaint and Consent Agreement/Final Order.

66. Respondent and Complainant agree to conciliate the matters set forth in this Complaint and Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their respective costs and attorney's fees.

67. This Complaint and Consent Agreement/Final Order addresses all civil administrative claims for the RCRA violations alleged above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other provision of RCRA or other applicable law.

68. Nothing contained in the Final Order portion of this Complaint and Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

69. Respondent agrees that, in settlement of the claims alleged in the Complaint and Consent Agreement/Final Order, Respondent shall pay a mitigated civil penalty of \$371,612.00 as set forth in paragraph 1 of the Final Order.

70. Respondent understands that failure to comply with the Final Order within the designated time frames may, among other things, subject Respondent to civil penalties of up to \$27,500 per day of non-compliance.

71. This Complaint and Consent Agreement/Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

72. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with paragraph 15 of the Final Order, that all requirements hereunder have been satisfied.

73. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Complaint and Consent Agreement/Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated civil penalty of \$ 371,612.00.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk
U.S. EPA Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall also be mailed to:

Belinda Holmes
Office of Regional Counsel
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

3. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the rate of five percent (5%) per annum.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Complaint and Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

5. Within thirty (30) days of the effective date of this Final Order, Respondent shall submit to EPA's representative identified in paragraph 8 below the following documents:

- a. The Olathe Facility's Hazardous Waste Contingency Plan;
- b. The Olathe Facility's Waste Management Procedures Manual, which contains, among other things, waste stream descriptions, hazardous waste container management requirements and spill response information for Facility employees; and

c. All hazardous waste manifests from the Olathe Facility for shipments of hazardous waste occurring during the second quarter of 2002 (April through June).

6. EPA's representative will review the documents identified in paragraph 5 above and provide comments to Respondent regarding any regulatory deficiencies noted in Respondent's current hazardous waste identification and management practices. Respondent shall correct any such noted deficiencies within thirty (30) days of the receipt of EPA's comments. If any such deficiencies are not corrected within thirty (30) days of receipt of comments, Respondent may be subject to the future assessment of penalties for any identified deficiencies.

7. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. 2.203(b) with respect to all or part of any information submitted to EPA pursuant to this Final Order. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

8. Copies of all documents required under the Final Order shall be submitted to:

Mr. Edwin Buckner, P.E.
ARTD/RESP
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

C. Parties Bound

9. This Final Order portion of this Complaint and Consent Agreement/Final Order shall apply to and be binding upon Complainant and Respondent and Respondent's agents, successors

and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Complaint and Consent Agreement/Final Order.

D. Reservation of Rights

10. Notwithstanding any other provision of this Complaint and Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Complaint and Consent Agreement/Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed twenty-seven thousand five hundred dollars (\$27,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

11. Complainant reserves the right to take enforcement action against Respondent for any violations of RCRA not alleged herein and to enforce the terms and conditions of this Complaint and Consent Agreement/Final Order.

12. Except as expressly provided herein, nothing in this Complaint and Consent Agreement/Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

13. Notwithstanding any other provisions of the Complaint and Consent Agreement/Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

14. The headings in this Complaint and Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Complaint and Consent Agreement/Final Order.

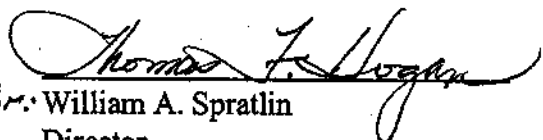
15. The provisions of this Complaint and Consent Agreement/Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

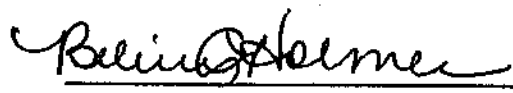
6-26-02

Date


for: William A. Spratlin
Director
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
Region 7

6/25/02

Date


Belinda Holmes
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

In the matter of LSPS, Inc., successor to Dymon, Inc.
Page 27

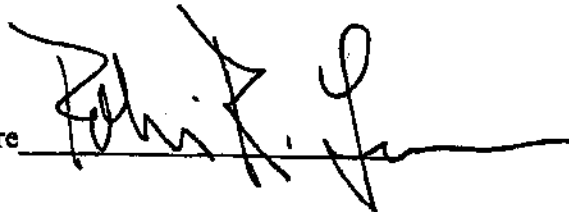
RESPONDENT:

LSPS, Inc., successor to Dymon, Inc.

6/25/02

Date

Signature



Printed Name Robin R. Lunn

Title Attorney

RESPONDENT:
LSPS, Inc., successor to Dymon, Inc.

Date

Signature _____

Printed Name _____

Title _____

IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borromeo
~~Robert P. Palko~~ Karina Borromeo
Regional Judicial Officer

Date June 26, 2002

**TOLLING AGREEMENT FOR CLAIMS UNDER THE RESOURCE CONSERVATION
AND RECOVERY ACT RELATING TO DYMON, INC., 3401 KANSAS AVENUE,
KANSAS CITY, KANSAS, 66106, RCRA I.D. NUMBER KSD067952994, AND ITW
DYMON, 805 E. OLD 56 HIGHWAY, OLATHE, KANSAS, RCRA I.D. NUMBER
KSR000005033**

The United States, on behalf of the United States Environmental Protection Agency, contends that it has a cause of action pursuant to Section 3008(a) of the Resource Conservation and Recovery Act of 1980, as amended ("RCRA"), 42 U.S.C. § 6928(a)(1)(A), against Dymon, Inc., which operated at 3401 Kansas Avenue, Kansas City, Kansas, 66106, RCRA I.D. No. KSD067952994, and at 805 E. Old 56 Highway, Olathe, Kansas, 66061, RCRA I.D. No. KSR000005033, and against Illinois Tool Works, Inc., d/b/a ITW Dymon, which now operates at the 805 E. Old 56 Highway, Olathe, Kansas, facility ("Respondents"). The United States' cause of action involves the assessment of civil or administrative penalties for alleged violations of RCRA which took place at Respondents' facilities in Kansas City, Kansas, and Olathe, Kansas.

Specifically, the United States contends that Respondents violated RCRA and its implementing regulations at one or both of its facilities by:

a. Operating as hazardous waste treatment, storage or disposal facilities without RCRA permits. Specifically, the United States contends that Respondents became treatment, storage, or disposal facilities and lost their "generator-only" status by storing hazardous waste at the facilities for longer than 90 days and by failing to meet several requirements for handling hazardous waste, including, but not limited to, improperly managing hazardous waste containers; improperly managing hazardous waste tank(s); having inadequate spill control equipment; failing to have adequate maintenance and operational practices; failing to have adequate training and job descriptions; failing to have an adequate contingency plan; failing to document hazardous waste container inspections; failing to make emergency arrangements with local authorities; and storing incompatible wastes without physically separating the wastes.

b. Failing to perform a hazardous waste determination on certain waste streams; and

c. Failing to include required information on hazardous waste manifests.

The above three alleged violations will hereafter be referenced as "the Tolloed Claims."

The United States and the Respondents ("Parties") enter into this Tolling Agreement to facilitate settlement negotiations between the Parties within the time period provided by this Agreement without thereby altering the claims or defenses available to any Party hereto, except as specifically provided herein.

The Parties, in consideration of the covenants set out herein, agree as follows:

1. Subject to the provisions of Paragraphs 5 and 6, the period commencing on January 14, 2002, and ending on March 14, 2002, inclusive (the "Tolling Period"), shall not be included in computing the running of any statute of limitations potentially applicable to any civil or administrative action brought by the United States on the Tolloed Claims.

2. Any defenses of laches, estoppel, or waiver, or other similar equitable defenses based upon the running or expiration of any time period, shall not include the Tolling Period for the Tolloed Claims.

3. The Parties shall not assert, plead, or raise against each other in any fashion, whether by answer, motion, or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolloed Claims.

4. This Tolling Agreement does not constitute any admission or acknowledgment of any fact, conclusion of law, or liability by any Party to this Tolling Agreement. The execution of this Tolling Agreement is not and shall not be taken or used as an admission or waiver by any Party hereto of the date when any applicable statute of limitations may commence or expire, nor is it an admission by either Party of any liability or the validity of any claim or cause of action described herein. The Parties expressly retain any defenses, including, without limitation, any defenses of laches, estoppel, waiver, or similar equitable defense or any statute of limitation defenses based on the running or expiration of any time period other than the Tolling Period. The United States reserves the right to assert that no statute of limitations applies to any of the Tolloed Claims and that no other defense based upon the timeliness of commencing a civil or administrative action is applicable.

5. This Tolling Agreement may not be modified except in a writing signed by all the Parties. The Parties acknowledge that this Tolling Agreement may be extended for such period of time as the Parties agree to in writing.

6. It is understood that either Party may terminate this Agreement at any time upon provision of written notice by certified mail, in which case the Tolling Period shall terminate on the 21st day after the date of receipt of such notice, regardless of any prior termination date set forth in Paragraph 1, above. Nothing herein shall preclude the commencement of any action by the United States to protect the public health, welfare, or the environment without provision of advance notice.

7. This Tolling Agreement does not limit in any way the nature or scope of any claims that could be brought by the United States in a complaint against the Respondents or the date on which the United States may file such a complaint. Any civil claims asserted by the United States other than the Tolloed Claims shall not be subject to this Tolling Agreement.

8. This Agreement is not intended to affect any claims other than tolloed claims by or against third parties.

9. This Tolling Agreement is effective upon execution by the Parties, and without the requirement of filing with the Court, and may be signed in counterparts.

10. This Tolling Agreement contains the entire agreement between the Parties with respect to tolling the Tolled Claims, and no statement, promise, or inducement made by any Party to this Tolling Agreement that is not set forth in this Tolling Agreement shall be valid or binding, nor shall it be used in construing the terms of this Tolling Agreement as set forth herein.

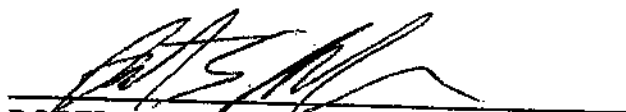
11. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Tolling Agreement and to legally bind such party to all terms and conditions of this document. This Tolling Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties hereto and to the Parties' respective predecessors, successors, and assigns.

SIGNATURES

The United States, including the United States Environmental Protection Agency, consents to the terms and conditions of this Tolling Agreement by its duly authorized representatives:

Date: _____

1/10/2002



ROBERT MAHER

Assistant Section Chief

Environmental Enforcement Section

Environment and Natural Resources Division

United States Department of Justice

P.O. Box 7611

Ben Franklin Station

Washington, DC 20044-7611

Date:

1/10/02

Belinda Holmes
BELINDA HOLMES

Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101
(913) 551-7714

Date:

1/10/02

William A. Spratlin
WILLIAM A. SPRATLIN, Director

Air, Toxics and RCRA Division
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101

The Respondents, Illinois Tool Works, Inc., d/b/a ITW Dymon, and Dymon Inc., consent to the terms and conditions of this Tolling Agreement by their duly authorized representative on this 10th day of January, 2002.

For Illinois Tool Works, Inc., d/b/a
ITW Dymon; and Dymon Inc.

By:

Sandra T. Sullivan
Name: Sandra T. Sullivan

Title:

Attorney

Address:

10801 Mission #1000
Douglas Park, Ks 66210

**TOLLING AGREEMENT FOR CLAIMS UNDER THE RESOURCE CONSERVATION
AND RECOVERY ACT RELATING TO DYMON, INC., 3401 KANSAS AVENUE,
KANSAS CITY, KANSAS, 66106, RCRA I.D. NUMBER KSD067952994, AND ITW
DYMON, 805 E. OLD 56 HIGHWAY, OLATHE, KANSAS, RCRA I.D. NUMBER
KSR000005033**

AMENDMENT #1

The above-captioned Tolling Agreement is attached to this Amendment (Attachment A) and is amended as follows:


1. The parties agree that the expiration date of the "Tolling Period" as defined in the original Tolling Agreement is extended from March 14, 2002 to May 14, 2002. All occurrences of or references to the "Tolling Period" in the Tolling Agreement shall be construed as including the time period between January 14, 2002 and May 14, 2002.

2. With the exception of the date of expiration of the "Tolling Period," all terms of the attached Tolling Agreement remain in full effect as set forth in the original document.

SIGNATURES

The United States, including the United States Environmental Protection Agency, consents to the terms and conditions of this Tolling Agreement by its duly authorized representatives:

Date: 3/13/02


ROBERT MAHER
Assistant Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

Date: 3/13/02

Belinda Holmes
BELINDA HOLMES
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101
(913) 551-7714

Date: 3/13/02

Carol Hatcher for
WILLIAM A. SPRATLIN, Director
Air, Toxics and RCRA Division
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101

The Respondents, Illinois Tool Works, Inc., d/b/a ITW Dymon, and Dymon Inc., consent to the terms and conditions of this Tolling Agreement by their duly authorized representative on this 12th day of March, 2002.

For Illinois Tool Works, Inc., d/b/a
ITW Dymon; and Dymon Inc.

By: Sarah T. Sullivan
Name: Sarah T. Sullivan
Title: Counsel for ITW Dymon & Dymon Inc.
Address:

**TOLLING AGREEMENT FOR CLAIMS UNDER THE RESOURCE CONSERVATION
AND RECOVERY ACT RELATING TO DYMON, INC., 3401 KANSAS AVENUE,
KANSAS CITY, KANSAS, 66106, RCRA I.D. NUMBER KSD067952994, AND ITW
DYMON, 805 E. OLD 56 HIGHWAY, OLATHE, KANSAS, RCRA I.D. NUMBER
KSR000005033**

AMENDMENT #2

The above-captioned Tolling Agreement and Amendment #1 to the Tolling Agreement are attached to this Amendment #2 as Attachments A and B, and are amended as follows:


1. The parties agree that the expiration date of the "Tolling Period" as defined in the original Tolling Agreement is extended from March 14, 2002 to June 28, 2002. All occurrences of or references to the "Tolling Period" in the Tolling Agreement shall be construed as including the time period between January 14, 2002 and June 28, 2002.

2. With the exception of the date of expiration of the "Tolling Period," all terms of the attached Tolling Agreement remain in full effect as set forth in the original document.

SIGNATURES

The United States, including the United States Environmental Protection Agency, consents to the terms and conditions of this Tolling Agreement by its duly authorized representatives:

Date: May 14, 2002


ROBERT MAHER
Assistant Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

Date: 5/13/02

Belinda Holmes

BELINDA HOLMES
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101
(913) 551-7714

Date: 5/13/02

William A. Spratlin

WILLIAM A. SPRATLIN, Director
Air, Toxics and RCRA Division
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101

The Respondents, Illinois Tool Works, Inc., d/b/a ITW Dymon, and Dymon Inc., consent to the terms and conditions of this Tolling Agreement by their duly authorized representative on this 13th day of May, 2002.

For Illinois Tool Works, Inc., d/b/a
ITW Dymon; and Dymon Inc.

By: Susan Sullivan
Name: Chase for ITW
Title:
Address: